

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement on Sunday, February 28, 1943, and Sunday, March 7, 1943, by refusing to pay H. W. Bonin at the rate of time and one-half his regular rate of \$7.90 per day. Also

(b) Claim that Mr. Bonin now be paid time and one-half his regular rate of \$7.90 per day for services performed on the above Sundays.

EMPLOYEES' STATEMENT OF FACTS: On the dates here involved Mr. Bonin was regularly assigned to position of Check Clerk in the Houston Warehouse with assigned hours 4:00 P. M. to 12:00 M. N. Mr. Bonin's rate of pay was \$7.90 per day, with an annual assignment of 306 days. Mr. Bonin was not assigned to work on Sundays and holidays.

Mr. R. L. Starling was regularly assigned to a position of Check Clerk in the Houston Warehouse with assigned hours 10:30 A. M. to 7:30 P. M. Mr. Starling's rate of pay was \$7.54 per day, with an annual assignment of 365 days. Mr. Starling was assigned to work each Sunday and holiday.

On the dates here involved Mr. Starling was absent because of illness and Mr. Bonin was required to work Mr. Starling's position.

Mr. Bonin was paid straight time at the rate of \$7.54 for services performed on the two Sundays.

POSITION OF EMPLOYEES: The employees quote the following rules as being particularly applicable in the instant case:

"RULE 50. PRESERVATION OF RATES

(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced.

It is the position of the Carrier that the claim presented in favor of Check Clerk Bonin for compensation at daily rate of \$7.90 (the rate of his position, not the rate of the position on which he worked) at time and one-half is without basis under the Clerks' Agreement for the following reasons:

(1) Rule 50 of the Agreement on which this claim is partially based was not designed to and does not cover a situation such as here involved where, in an emergency, an employee is called on Sunday to fill the vacancy of an employee regularly assigned to work on that date. That rule was, rather, designed to cover a situation where it is known that a temporary (less than 30 days) vacancy will exist and as vacancies of less than 30 days duration need not be bulletined for applications the vacancy can be filled by the Carrier selecting a competent employee to temporarily fill the vacancy; or where one or more employees, in conjunction with their regular work, are temporarily assigned to assist in keeping up the work of another assignment due to the temporary absence of the regular incumbent. Under those circumstances Rule 50 provides that "Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work;" and "employees temporarily assigned to lower rated positions or work shall not have their rates reduced."

(2) Paragraph (b) of Article 43, on which this claim is also based, provides that "Employees who are called regularly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate, except as provided in Rule 47." (Underscoring ours.) Rule 47, as previously shown, specifically provides that "employees regularly assigned to work full time on Sundays and the seven designated holidays, and men called to fill their places on such regular assignment, will be compensated at the pro rata rate of the position." (Underscoring ours.) Check Clerk Bonin was called to fill the place of such regular assignment and, accordingly, was properly compensated under that rule.

(3) Rule 47, under which Check Clerk Bonin was compensated, makes no provision under any circumstances for paying other than "at the pro rata rate of the position," and the rule was, obviously, specifically designed to cover just such a situation as is here involved.

(4) In view of the clear and unmistakable provisions of Rule 47 there is no authority for the Carrier, nor for the Board, to allow Check Clerk Bonin compensation at a rate of pay higher than that of the position on which he worked; neither is there any authority for compensating him at the overtime (time and one-half) rate for service performed on the two Sundays in question.

When consideration is given to all the facts in this case, together with the governing provisions of the Clerks' Agreement (Rule 47), it is clearly evident that the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: On the dates involved in this claim H. W. Bonin was regularly assigned to the position of Check Clerk, week days only, except holidays, at a daily rate of \$7.90. Sunday was his regularly day of rest. One Starling was regularly assigned as Check Clerk on a 365-day annual assignment. His daily rate, including Sundays, was \$7.54. On the two Sundays in question, Starling was absent because of illness and Bonin was called to work Starling's position and was compensated therefor at the straight time rate of \$7.54 per day. Claimant contends that Bonin should have been paid his regular rate of \$7.90 when temporarily assigned to a lower rated position and time and one-half rate on account of being called on Sunday.

Claimant contends that the daily rate of \$7.90 applies by virtue of that part of Rule 50 (a) which provides that "employees temporarily assigned to lower rated positions or work shall not have their rates reduced," and that time and one-half should be paid for Sunday work in accordance with Rule 43 (a).

The Carrier contends that Bonin is entitled only to the pro rata rate because of that part of Rule 47 which provides in part that "Work performed on Sundays . . . shall be paid for at the rate of time and one-half, except that employees regularly assigned to work full time on Sundays . . . and men called to fill their places on such regular assignment, will be compensated at the pro rata rate of the position." The cited rules appear to be conflicting with the result that they are subject to construction. The purpose of this Board is to determine as nearly as possible the intent of the contracting parties at the time the agreement was made. In so doing, we must assume that all the language used in formulating the rules which are to be construed together, was intended to convey some meaning and consequently we are required to give the intended effect to every part of each rule.

Rule 47 provides that men called to fill position of employees regularly assigned to work full time on Sundays will be compensated at the pro rata rate of the position. Rule 50 provides that employees temporarily assigned to lower rated positions or work will not have their rates of pay reduced. Clerk Bonin was clearly assigned to a lower rated position. If we ignore Rule 50, then we fail to give effect to a rule that purports to be general in character and in no way abrogated as to its effect. Consequently Rule 47 must be construed to refer to employees called who are entitled as a matter of right to perform the work and whose daily rate of pay is the same as that of the position to which they are temporarily called. This would mean, as an example, that an extra man would have to work on a Sunday, in a position such as Bonin filled, at the pro rata rate of the position. The purpose of the quoted part of the rule is to eliminate the possibility of an extra man or regular relief man claiming time and one-half when the regular occupant of the position is not entitled to it. The result is that Rule 50 is generally in force as to all positions coming within its scope, thus leaving the exception contained in Rule 47 in operation only in that class of cases falling without the scope of Rule 50. The practical result of this interpretation is that the exception to Rule 47 comes into play only when the employee called is classified and rated the same as the regular occupant of the position. We think, therefore, that Clerk Bonin, being a higher rated employee, falls within the scope of Rule 50 rather than within the exception contained in the latter part of Rule 47.

The Carrier urges, however, that Rule 50 was intended to apply only to the temporary filling of vacancies or where employees in conjunction with their regular work are temporarily assigned to assist in keeping up the work of another assignment due to the temporary absence of the regular incumbent. This Board has consistently applied the rule where the employee performs the duties of a higher rated position even for one day only. The interpretation advanced by the Carrier finds no support in the past awards of this Board. Certainly Rule 50 contains no specific limitation of that nature nor can such an interpretation logically be read into it.

With reference to Rule 43, we are of the opinion that it is applicable to the present dispute. Clerk Bonin was performing work which apparently had no direct relation to his regular assignment. This brings him squarely within the scope of Rule 43 (a) and, we having heretofore determined in our discussion of Rules 50 and 47 that the exception in Rule 47 does not apply, the claimant is entitled to pay at time and one-half for the two Sundays forming the basis of this claim.

We conclude, therefore, that claimant is entitled to be paid for working the two Sundays in question at the daily rate of his regularly assigned posi-

tion, to wit, \$7.90, by virtue of Rule 60; and that he is entitled to pay at time and one-half by virtue of Rule 43. This necessarily implies the non-application of Rule 47 to situations such as we have here.

The record affords a sufficient basis for an affirmative award.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the current agreement as contended by the claimant.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1944.